Office Supreme Court, U. S.
FILED
APR 3 1915
JAMES D. MAHER
CLERK

No. [redacted] 95

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1914.

THE RAILROAD SUPPLY COMPANY,
Petitioner,

vs.

ELYRIA IRON & STEEL COMPANY,
Respondent.

Petition for a Writ of Prohibition to the United States District Court for the Eastern Division of the Northern District of Ohio and for a Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

Petition for Writ of Prohibition and of Certiorari.

TAYLOR E. BROWN,
CHARLES C. LINTHICUM,
CLARENCE E. MEHLHOPE,
COUNSEL FOR PETITIONER.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1914.

THE RAILROAD SUPPLY COMPANY, *Petitioner,* vs. THE ELYRIA IRON & STEEL COMPANY, *Respondent.*	Petition for a Writ of Prohibition to the United States District Court for the Eastern Division of the Northern District of Ohio and for a Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

PETITION FOR WRITS OF PROHIBITION AND OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Railroad Supply Company, your petitioner, respectfully represents and shows unto your Honors as follows:

I. That on the ninth day of December, 1908, your petitioner filed its bill of complaint against The Elyria Iron and Steel Company, respondent herein, in the Circuit (now District) Court of the United States for the Eastern Division of the Northern District of Ohio (said cause being designated "in Equity No. (7668) 26,") alleging the infringement of Letters Patent No. 538,809, dated May 7, 1895, No. 691,332 dated May 14, 1902, and No. 721,644, dated February 24, 1903, each issued to the inventor,

Benjamin Wolhaupter, for improvements in Tie Plates; and after issue joined, testimony taken and hearing upon pleadings and proofs by the court, Hon. W. L. Day, District Judge, presiding, a decree was entered on the fourth day of March, 1912, dismissing said bill of complaint for want of equity.

II. Your petitioner further shows that an appeal was granted and prosecuted in said cause to the United States Circuit Court of Appeals for the Sixth Circuit, Docket No. 2322; that on the 7th day of April, 1914, said Circuit Court of Appeals filed an opinion holding each of said Wolhaupter Letters Patent invalid, and if not invalid, then not infringed, and entered an order affirming the said decree of the District Court; that on the 30th day of June, 1914, the said Circuit Court of Appeals denied a petition for a rehearing of said cause, and in due course issued its mandate directing the affirmance of said decree of dismissal; that on the 20th day of July, 1914, said mandate was duly filed in and an order duly entered by said District Court, providing that the judgment of the said Circuit Court of Appeals be entered as the judgment of the said District Court and that the defendant recover its costs to be taxed; but your petitioner shows that the costs in said cause have not been adjusted, taxed nor settled, and that said cause is still pending in said District Court.

III. Your petitioner further shows that on the 11th day of December, 1908, it filed its Bill of Complaint in the Circuit (now District) Court of the United States for the Eastern Division of the Northern District of Illinois, against The Hart Steel

Company and Guilford S. Wood, as defendants (designated "in Equity No. 29,294)," alleging infringement of the same three Letters Patent for improvements in Tie Plates, granted to Benjamin Wolhaupter on which the suit last aforesaid was brought against The Elyria Iron&Steel Company in the Sixth Circuit; that after issue joined, testimony taken and hearing upon pleadings and proofs by the court, Hon. C. C. Kohlsaat, Circuit Judge, presiding, a decree was entered on the 28th day of December, 1911, dismissing the bill of complaint for want of equity; that upon an appeal from said decree, the United States Circuit Court of Appeals for the Seventh Circuit, Docket No. 1886, filed an opinion on the 5th day of January, 1915, holding each of said Letters Patent to be valid and also infringed, and on the date last aforesaid, an order or decree was entered in said cause No. 1886, reversing the said decree appealed from and directing further proceedings in conformity with the said opinion of the said Circuit Court of Appeals.

IV. Your petitioner further shows that on the 8th day of March, 1915, the said The Hart Steel Company and Guilford S. Wood, filed their petition in this court for a Writ of Certiorari based, in part, upon the divergence between the opinion and decision of the Circuit Court of Appeals for the Sixth Circuit in the said suit against The Elyria Iron & Steel Company, No. 2322, and the opinion and decision of the Circuit Court of Appeals for the Seventh Circuit, in the said suit against said The Hart Steel Company and Wood, No. 1886, said petition for certiorari being docketed in this court, as No. 825, October Term, A. D. 1914; that on the 15th day of

March, 1915, an order was entered in this court in said case No. 825, granting said petition, and that said cause is now pending in this court.

V. Your petitioner further shows that the Circuit Court of Appeals for the Sixth Circuit committed error in its judgment and decree in said cause No. 2322, and that the decree now standing in said cause in said District Court for the Eastern Division of the Northern District of Ohio is unjust and erroneous, for the following reasons:

(a) In that it dismissed your petitioner's Bill of Complaint therein for want of equity:

(b) In that it does not sustain and hold valid Claim 8 of Letters Patent No. 538,809, Claims 1, 2 and 3 of Letters Patent No. 691,332 and Claims 7 and 9 of Letters Patent No. 741,644.

(*c*) In that it does not hold each of said six claims to be infringed by the defendant's tie plate;

(*d*) In that it does not direct the issuance of an injunction against the defendant therein restraining further infringement of Letters Patent No. 691,332 and 721,644 (Letters Patent No. 538,809 having expired *pendente lite*);

(*e*) In that it does not direct an accounting for profits and damages with respect to said infringement of each of said Letters Patent; and

(*f*) In that it directs that the defendants shall recover costs to be taxed.

VI. Your petitioner further shows that in the said causes in the Sixth and Seventh Circuits aforesaid, the patents sued on were the same; the defendants' structure alleged to be an infringement was the

same; and the same evidence and exhibits were filed in each case, so that, excepting for the differences in the parties defendant, proofs in said two causes are identical, as stated in a copy of a stipulation of counsel hereto attached as Exhibit "A."

VII. Wherefore, your petitioner, The Railroad Supply Company, respectfully prays:

First: That a *writ of prohibition* may issue out of and under the seal of this court directed to the District Court of the United States for the Eastern Division of the Northern District of Ohio to prohibit the carrying into effect of the said decree entered on the 20th day of July, 1914, in said cause entitled *The Railroad Supply Company* v. *The Elyria Iron & Steel Company,* and to prohibit any and all further proceedings in said cause in said District Court until the further order of this court;

Second: That a *writ of certiorari* may be issued out of and under the seal of this court directed to the United States Circuit Court of Appeals for the Sixth Circuit commanding said court to certify and send to this court, on a day certain therein to be named, a full and complete transcript of the record of all proceedings in said court in said cause, entitled *The Railroad Supply Company* v. *The Elyria Iron & Steel Company,* No. 2322, to the end that said cause may be reviewed and determined by this court in accordance with the statutes in such case made and provided;

Third: That the original of said stipulation of counsel may be filed with and treated as part of the return upon said writ of certiorari, and as waiving the filing of a duplicate record;

Fourth: That the record in said cause No. 825 entitled *The Hart Steel Company and Guilford S. Wood, Petitioners,* v. *The Railroad Supply Company, Respondent,* be received and treated as the record in this cause in accordance with said stipulation; and

Fifth: That this cause be set for hearing with said cause for No. 825.

And your petitioner will forever pray.

THE RAILROAD SUPPLY COMPANY,
By HENRY S. HAWLEY,
President.

Attest:
E. H. BELL,
Secretary.

TAYLOR E. BROWN,
CHARLES C. LINTHICUM,
CLARENCE E. MEHLHOPE,
Solicitors and Counsel for Petitioner.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1914.

The Railroad Supply Company,
Petitioner,
vs.
The Elyria Iron & Steel Company,
Respondent.

Petition for writ of prohibition to the United States District Court for the Eastern Division of the Northern District of Ohio and for writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

NOTICE.

Frank F. Reed, Esq., Edward S. Rogers, Esq., Frederick P. Fish, Esq.,
Solicitors and of Counsel for Respondent,
Peoples Gas Building, Chicago.

GENTLEMEN:

You are hereby notified that on Monday, April 5, 1915, I shall be and appear in the Supreme Court of the United States at Washington, D. C., and ask leave to file therein the foregoing Petition for Writs of Prohibition and of Certiorari, together with the accompanying brief in support thereof; three copies of which petition and brief are herewith delivered to you. You are entitled to oppose, if you so desire.

TAYLOR E. BROWN.

Service of the foregoing notice acknowledged and receipt of three copies of the said petition and brief received this 22nd day of March, A. D. 1915.

FRANK F. REED.
Counsel for Respondent.

EXHIBIT A.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1914.

The Railroad Supply Company,
Petitioner,
vs.
The Elyria Iron & Steel Company,
Respondent.

Petition for Writ of Prohibition to the United States District Court for the Eastern Division of the Northern District of Ohio, and for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

STIPULATION.

IT IS HEREBY STIPULATED by and between counsel for the respective parties to the above entitled cause as follows:

I. That the patents sued on, the proofs and exhibits filed in said cause and the printed records, with minor and immaterial exceptions, are identical with the patents sued on, and the proofs, exhibits and printed records filed in a cause now pending in the Supreme Court of the United States, No. 825, October Term, A. D. 1914, entitled *The Hart Steel Company and Guilford S. Wood, Petitioners,* v. *The Railroad Supply Company, respondent.*

II. That in the event of the petition in the above entitled cause being granted, counsel for respondent hereby agrees that, the court consenting thereto, a copy of this stipulation may be attached to and made a part of the return to the Writ of Certiorari directed to the United States Circuit Court of Ap-

peals for the Sixth Circuit, in lieu of a transcript of the record in this cause and in satisfaction of said writ; and that for all purposes of the review of the above entitled cause in this court the record and exhibits filed or to be filed in the pending cause, Docket No. 825, entitled *The Hart Steel Company and Guilford S. Wood, Petitioners,* v. *The Railroad Supply Company, Respondent,* may be used and considered in all respects as the record and exhibits in the cause of *The Railroad Supply Company, Petitioner,* v. *The Elyria Iron & Steel Company, respondent.*

III. It is further stipulated that, in the event of the petition in the above entitled cause being granted, the same may be heard, the court consenting thereto, at the same time as and together with the hearing in the said pending cause, Docket No. 825, entitled *The Hart Steel Company and Guilford S. Wood, Petitioners,* v. *The Railroad Supply Company, respondent,* and that the briefs by counsel for the respective parties may be entitled in and received in both cases.

Chicago, Illinois, March 22, 1915.

TAYLOR E. BROWN,
Counsel for The Railroad Supply Company.

FRANK F. REED,
Counsel for The Elyria Iron and Steel Company.